

STATE OF COLORADO

Bill Ritter, Jr., Governor
James B. Martin, Executive Director

Dedicated to protecting and improving the health and environment of the people of Colorado

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Colorado Department
of Public Health
and Environment

November 17, 2008

PWSID# CO-0134790

Mr. Martin Hotter, Registered Agent
Ute Pass Water Association, Inc.
20 Ute Pass Road
Durango, CO

Certified Mail Number: 7005 1820 0000 3207 2652

RE: Service of Amendment to Enforcement Order Number: DC-070410-4

Dear Mr. Hotter:

Ute Pass Water Association, Inc. is hereby issued the enclosed amendment to the Enforcement Order (Number: DC-070410-4) that was issued to Ute Pass Water Association, Inc. on April 10, 2007. This order amendment is issued by the Colorado Department of Public Health and Environment's Water Quality Control Division (the "Division") pursuant to the authority given to the Division by §25-1.5-203 of the Colorado Revised Statutes.

Should you desire to discuss this matter with the Division or if you have any questions regarding the order amendment(s), please don't hesitate to contact Ms. Cathy Heald of this office at (303) 692-3254 or by electronic mail at catherine.heald@state.co.us.

Sincerely,

Kristi-Raye Beaudin, Legal Assistant
Compliance Assurance and Data Management Section
WATER QUALITY CONTROL DIVISION

cc: San Juan Basin Health Department
Compliance Monitor / Drinking Water File

ec: Greg Brand, Engineering Section, CDPHE
Dick Parachini, Watershed Program, CDPHE
Betsy Beaver, Facility Operators Program, CDPHE
Shawn McCaffrey, EPA Region VIII
Carolyn Schachterle, OPA

Enclosures



**COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT
WATER QUALITY CONTROL DIVISION**

AMENDMENT NUMBER ONE TO ENFORCEMENT ORDER NUMBER: DC-070410-4

**IN THE MATTER OF: UTE PASS WATER ASSOCIATION, INC.
PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0134790
LA PLATA COUNTY, COLORADO**

Pursuant to the authority vested in the Colorado Department of Public Health and Environment (the "Department") by §25-1-109 and §25-1.5-203 of the Colorado Revised Statutes ("C.R.S."), which authority has been delegated to the Department's Water Quality Control Division (the "Division"), the Division hereby amends Enforcement Order Number: DC-070827-3 issued to Ute Pass Water Association, Inc.

GENERAL FINDINGS

1. On April 11, 2007, the Division issued an Enforcement Order: No. DC-070410-4 to Ute Pass Water Association citing violations of the Colorado Primary Drinking Water Regulations for failure to prepare, certify and/or deliver a consumer confidence report. The Enforcement Order is attached hereto as Exhibit A and is incorporated herein by reference.
2. In response to the Enforcement Order DC-070410-4, the Ute Pass Water Association provided copies of the calendar year 2005 Consumer Confidence Report (CCR) and the associated certificate of delivery form reflecting that it was delivered to the system's customers. However, the documentation that the system submitted did not provide evidence that copies of the CCR and certificate of delivery were submitted to the Division by the July 1, 2006 due date.
3. After re-evaluating the facts associated with the issuance of the Enforcement Order Number DC-071130-2 the Division has determined that the following amendments to the enforcement order and the associated administrative penalty assessment are appropriate.

AMENDMENT NUMBER ONE

4. Effective as of the issued date of this Amendment, Enforcement Order Number: DC-070410-4 is therefore amended to revise the Enforcement Order as follows:
 - a. Since Ute Pass Water Association provided documentation to the Division establishing that the calendar year 2005 CCR was prepared and delivered to the system's customers, the Order for

Administrative Penalty Section, paragraphs 16-18, are superseded and replaced with the following new paragraphs:

ORDER FOR ADMINISTRATIVE PENALTY

16. Pursuant to §25-1-114.1(2.5)(a), C.R.S. any person who violates the *Colorado Primary Drinking Water Regulations* or any final Enforcement Order issued by the Division, shall be subject to an administrative penalty as follows:
 - a. For systems that serve a population of more than ten thousand people, an amount not to exceed one thousand dollars per violation per day; or
 - b. For systems that serve a population of ten thousand people or less, an amount not to exceed one thousand dollars per violation per day, but only in an amount, as determined by the division, that is necessary to ensure compliance.
17. Based upon the facts described in this action the Department has determined that an administrative penalty is appropriate in this matter and therefore assesses an administrative penalty of ***One Hundred Fifty dollars (\$150.00)*** for the specific violations identified in this action. The reasoning behind this penalty amount is detailed in the administrative penalty methodology/calculation worksheet, which is incorporated herein by reference and enclosed as Exhibit B.

Terms of Administrative Penalty Payment

18. If Ute Pass Water Association does not contest the findings and penalty assessment set out above, payment of the administrative penalty for the violations shall be forwarded to the Colorado Department of Public Health and Environment within sixty (60) calendar days of the date of issue of this action. Method of payment shall be by certified or cashier's check drawn to the order of the "Colorado Department of Public Health and Environment," and delivered to:

Ms. Catherine Heald, Drinking Water Enforcement Specialist
Colorado Department of Public Health and Environment
Water Quality Control Division
Mail Code: WQCD-CADM-B2
4300 Cherry Creek Drive South
Denver, Colorado 80246-1530

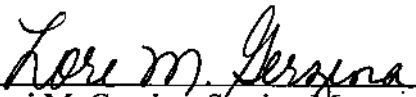
Payment or appeal of the administrative penalty in this manner does not relieve Ute Pass Water Association of its obligation to perform the activities required by this action.

SCOPE OF AMENDMENT NUMBER ONE

The scope of this Amendment Number One to Enforcement Order Number DC-070827-3 is limited to the revisions outlined above. All other terms and conditions of the Enforcement Order shall remain unchanged and in effect.

Issued at Denver, Colorado, this 17th day of November, 2008.

FOR THE COLORADO DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT



Lori M. Gerzina, Section Manager
Compliance Assurance and Data Management Section
Water Quality Control Division

Exhibit B

**UTE PASS WATER ASSOCIATION
PUBLIC WATER SYSTEM IDENTIFICATION NUMBER: CO-0134790
LA PLATA COUNTY, COLORADO**

**ADMINISTRATIVE PENALTY COMPUTATION WORKSHEET
(November 12, 2008)**

Penalty Summary

Penalty Calculation -Violation Number 1..... \$150.00

Violation: Failure to Deliver to the Division/Certify Consumer Confidence Report
Regulation Violated: 5 CCR 1003-1, §9.1.2

TOTAL PENALTY.....\$150.00

Exhibit B

ADMINISTRATIVE PENALTY COMPUTATION WORKSHEET
VIOLATION NUMBER: 1

System Name: Ute Pass Water Association, Inc.	PWSID Number: CO-0134790
Date of Enforcement Order: April 10, 2007	Number: DC-070410-4
Regulation Violated: Consumer Confidence Report Violation, 5 CCR 1003-1, §9.1.2	Population Served: 60

Part I – Base Penalty Calculation

	Violation Type	Population Range	Amount in Dollars
Line 1:	Failure to deliver to the division/certify the calendar year 2005 Consumer Confidence Report	< 500 Served	\$100.00

Part II – Application of Aggravating or Mitigating Factors

	Aggravating / Mitigating Factors	% Base Penalty Increase or Decrease	Amount in Dollars
Line 2	Factor A: Threat to Public Health and Welfare <i>Justification: n/a</i>		\$0.00
Line 3	Factor B: Intentional, Reckless, or Negligent Actions <i>Justification: n/a</i>		\$0.00
Line 4	Factor C: Recalcitrance or Recidivism <i>Justification: Ute Pass Water Association was issued an Enforcement Order (number DC-060224-10) on February 24, 2006 for its failure to comply with the calendar year 2004 Consumer Confidence Report (CCR) requirements. The System failed to prepare, certify and/or deliver their 2004 CCR. Therefore, Ute Pass Water Association has demonstrated a history/pattern of not complying with its regulatory obligations, thereby revealing a level of disregard for regulatory programs. Ute Pass Water Association's continued noncompliance for part of the same violation in 2005 supports an upward adjustment of 50%.</i>	+50%	\$50.00
Line 5	Factor D: Voluntary and Complete Disclosure		\$0.00

Exhibit B

	Aggravating / Mitigating Factors	% Base Penalty Increase or Decrease	Amount in Dollars
	of Violations		
	<i>Justification: n/a</i>		
Line 6	Factor E: Full and Prompt Cooperation		\$0.00
	<i>Justification: n/a</i>		
Line 7	Factor F: Environmental Compliance Program		\$0.00
	<i>Justification: n/a</i>		
Line 8	Factor G: Other Aggravating or Mitigating Circumstances		\$0.00
	<i>Justification: n/a</i>		
Line 9	Sum of Lines 2 through Line 8		\$50.00
Line 10	Adjusted Base Penalty (Sum of Line 1 + Line 9)		\$150.00

Part III – Determination of Days of Violation

		Days of Violation
Line 11	Total Days of Violation	1
	<i>Justification: The Division has chosen to consider this Consumer Confidence Reporting violation to be a single day violation.</i>	

Part IV – Determination of Multi-Day Penalty Amount

		Amount in Dollars
Line 12	Multi-Day Penalty Amount	\$150.00
	Calculations:	
	Day 1 (\$150.0) = \$150.00	

Exhibit B

Part V – Economic Benefit Consideration

			Amount in Dollars
Line 13	Economic Benefit:		\$0.00
	<i>Justification: The Division does not believe that Ute Pass Water Association will realize a significant benefit from the delayed cost of preparing and distributing its CCR.</i>		

Part VI – Violation Penalty Total

			Amount in Dollars
Line 14	Total Administrative Penalty: (Line 12 + Line 13)		\$150.00

Part VII – Ability to Pay Adjustment

			Amount in Dollars
Line 15	Ability to Pay Reduction:		\$0.00
	<i>Justification: The Division does not have any information suggesting that Ute Pass Water Association has an inability to pay the assessed penalty amount. .</i>		

Part VIII – Final Adjusted Penalty

			Amount in Dollars
Line 16	Total Administrative Penalty: (Line 14 - Line 15)		\$150.00